

SERVED: June 8, 1992

NTSB Order No. EA-3574

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

SE-9990

PETER PUGSLEY,

Respondent.

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Joyce Capps issued in this proceeding on December 4, 1989, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an order of the Administrator suspending respondent's commercial pilot and flight instructor certificates for sixty

¹An excerpt from the hearing transcript containing the initial decision is attached.

days² on allegations that he violated section 91.9 of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 91,³ as a result of his operation, as pilot in command, of an aircraft which the Administrator alleges to have crashed due to fuel exhaustion. On appeal, respondent argues that the law judge erred in sustaining the Administrator's order as there was insufficient evidence to establish the allegations.⁴ Because we find, for the reasons that follow, respondent's several contentions in this regard to be without merit, we will deny his appeal and affirm the law judge's initial decision.

The Administrator's order, which served as the complaint in this matter, alleges in pertinent part as follows:

"2. On May 29, 1988, you [respondent] acted as pilot in command of civil aircraft N6042X, a Beech C-23 Sundowner owned by another, on an instructional local flight under VFR in the vicinity of Meriden-Markham Airport, Meriden, Connecticut.

3. Throughout said flight, you provided instrument flight instruction to your student, a Private Pilot.

²The law judge modified the Administrator's order from a 120 day suspension to a 60 day suspension. The Administrator has not appealed the sanction modification.

³FAR section 91.9 provided at the time of the incident as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

⁴The Administrator has filed a brief in reply.

4. At approximately 1415 local time, civil aircraft N6042X executed a go-around at Meriden-Markham Airport, and while on climbout lost engine power.

5. Said loss of power was due to fuel exhaustion.

6. Civil aircraft N6042X then descended and impacted a tree and an occupied house approximately 1/2 mile off the departure end of runway 36, resulting in serious injuries to you, fatal injuries to the student, damage to the house, and destruction of civil aircraft N6042X.

7. Said flight was the first flight of the student in an aircraft of this make and model.

8. Nevertheless, you allowed the student to conduct the preflight alone.

9. Prior to takeoff on said flight, you failed to verify the amount of fuel on board.

10. Your operation of an aircraft in the manner and under the circumstances described above was careless so as to endanger the lives and property of others."

On the day in question, respondent was serving as a flight instructor on an instrument instruction flight which was scheduled to last one hour. Respondent's student had already pre-flighted the aircraft before respondent's arrival. According to respondent, he also checked the oil and fuel quantities before they departed. Respondent further claims that he observed approximately 30 gallons of fuel [15 gallons each] in the two wing tanks, and that his observations were confirmed by the fuel gauges. Because they had spent about 20 minutes on the ground before take-off, respondent decided to extend the one-hour lesson. Later, when the student was having difficulty performing his final

landing, respondent again extended the lesson, by instructing the student to execute a go-around.⁵ During the go-around, the aircraft engine suffered a power loss and the aircraft crashed into a house near the airport.

According to an examination of the fuel records and flight tickets, after its fuel tanks had been filled with 29.1 gallons.⁶ According to the calculations of the Administrator's witnesses, with a full tank in this particular aircraft, which holds 59.8 gallons of fuel, 57.2 of them useable, a pilot should get slightly more than 5 hours of flight time. The record establishes that subsequent to the last re-fueling, the aircraft was operated 5.01 hours (tachometer time) and 6.2 hours (Hobbs meter time), including respondent's operation. Hence, an FAA inspector who testified on behalf of the Administrator concluded that the aircraft engine power loss was in all likelihood due to fuel exhaustion. The investigation did not reveal any other likely causes for the engine failure.

⁵The flight lasted 1.9 hours according to the Hobbs meter.

⁶The pilot instructed the fueller to top off the aircraft. Generally the aircraft was fueled at the end of each day up to 40 gallons of fuel, but apparently, it was not re-fueled the night before respondent's flight.

The determination of fuel exhaustion as the likely cause of the crash is supported by evidence in the record. The FAA inspector who arrived on scene two hours after the accident testified that when he checked the fuel tanks he found that they were essentially empty of fuel and that there were no significant indications of large amounts of fuel on the ground. His observations are consistent with the testimony of a firefighter who responded within three minutes of the crash. The firefighter testified that he neither smelled nor saw fuel. He only ordered a foam line because it was standard operating procedure to do so. Even though a Fire Marshall's report of the incident later indicated that there was fuel pouring out of the plane and covering the ground around the aircraft, the firefighter testified that the flowing stream was in fact determined to be water flowing from a water faucet which had been broken when the plane impacted the house. Although another percipient witness, a flight instructor who saw the aircraft crash, testified that when he first arrived at the accident site he smelled a distinct odor of fuel, he also testified that he heard the aircraft stop and saw a windmilling propeller, which further support the conclusion that the loss of engine power was due to fuel exhaustion. Finally, the law judge implicitly concluded, as a matter of credibility, that respondent could not have seen 30 gallons of fuel, "even if" he did look.

Respondent offers us no persuasive reason to disturb that determination.

Notwithstanding respondent's assertion that, for purposes of this appeal "[W]e can assume the engine lost power due to fuel starvation...." (Appeal Brief at 6), the errors which he claims that the law judge made in sustaining the Administrator's order ignore that fact, and are, in any event, irrelevant to the finding of a violation of FAR section 91.9. The law judge concluded respondent was careless in allowing the aircraft to take off with inadequate fuel, not in instructing the student to execute a go-around with inadequate fuel. We agree. This finding would not be affected by whether the fuel gauges registered incorrectly during the go-around when the tanks were nearly empty. Nor are the fuel-burn calculations using tachometer times rather than Hobbs meter times necessarily inconsistent with the theory of fuel exhaustion as the cause of the crash. Using either calculation, respondent's claim that he observed 30 gallons of fuel is belied. Using tachometer times, the aircraft would have consumed 34.25 gallons of fuel by the two previous pilots; and using Hobbs times, upon which the law judge placed reliance, the aircraft would have consumed 41.4 gallons by the two previous pilots. Subtracting the Hobbs figure, on which the law judge relied, from 57.2 gallons, the maximum amount of usable fuel these tanks could hold, there

was at most 15.8 gallons of usable fuel left in the tanks, not 30 gallons as respondent claims. The difference between 15.8 and 30 gallons of available fuel is obviously significant, particularly in light of respondent's decision to extend the lesson by almost one hour. For these reasons, we adopt the law judge's findings as our own.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the law judge with regard to sanction, and the initial decision and order are affirmed; and
3. The 60-day suspension of respondent's commercial and flight instructor certificates shall begin 30 days after service of this order.⁷

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).